

# Graue Mill Country Condominiums #3

## Declarations & Covenants

# Declaration Condominium III



**Graue Mill**

---

---

Country Condominiums

---

---

**DECLARATION**

ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP  
OF  
PREMISES IN HINSDALE, ILLINOIS  
PURSUANT TO THE CONDOMINIUM PROPERTY ACT OF THE  
STATE OF ILLINOIS

NAME . . . . . GRAUE MILL COUNTRY CONDOMINIUM III  
DEVELOPER . . . . . GRAUE MILL SALES AND MANAGEMENT LTD.,  
an Illinois Corporation  
DECLARANT . . . . . AMERICAN NATIONAL BANK AND TRUST  
COMPANY, a National Banking Association,  
not individually, but as Trustee under a Trust  
Agreement dated June 1, 1973 and known as  
Trust No. 77182  
DATE OF DECLARATION . . . . . October 27, 1978

**THIS DOCUMENT PREPARED BY:**

Ronald S. Miller  
Devoe, Shadur & Krupp  
Suite 1200  
208 S. LaSalle Street  
Chicago, Illinois 60604

## INDEX

- ARTICLE I** Definitions
- ARTICLE II** Submission of Property to the Act
- ARTICLE III** Plat
- ARTICLE IV** Units
1. Delineation of Boundaries
  2. Amended Surveys
  3. Certain Structures Not Constituting Part of Unit
  4. Declaration of Covenants, Conditions and Restrictions
- ARTICLE V** Common Elements
1. Description of Common Elements
  2. Ownership
  3. Non-Severability
  4. Use
  5. Easements
    - (a) Encroachments
    - (b) Common Elements Located Inside of Units
    - (c) Utility Easements
    - (d) Maintenance
    - (e) Roadway and Other Easements
    - (f) Easements to Run with Land
  6. Alterations, Additions and Improvements
- ARTICLE VI** Maintenance and Repairs
1. Repairs
  2. Decorating
  3. Responsibility for Damages
  4. Utilities
- ARTICLE VII** Administration
1. Administration of Property
  2. Administration Prior to Election of Board
  3. Association
  4. Voting Rights
  5. Meetings of Voting Members
    - (a) In General
    - (b) Annual Meeting
    - (c) Special Meetings
    - (d) Significant Actions
    - (e) Notices of Meetings

**ARTICLE VII (con't.)**

6. Election and Term of Board
7. Meetings of Board
8. Removal of Board Members
9. Officers
10. Powers and Duties of Board
11. Liability of the Board
12. Amendment of Article VII

**ARTICLE VIII**

Insurance

**ARTICLE IX**

Assessments - Maintenance Fund

**ARTICLE X**

Covenants and Restrictions as to Use and Occupancy

**ARTICLE XI**

Sale, Leasing or Other Alienation

1. Sale or Lease
2. Gift
3. Devise
4. Involuntary Sale
5. Consent of Voting Members
6. Release, Waiver and Exceptions to Option
7. Proof of Termination of Option
8. Financing of Purchase under Option
9. Title to Acquired Interest
10. Exceptions to Board's Right of First Refusal
11. Responsibility of Transferees for Unpaid Assessments

**ARTICLE XII**

Damage or Destruction and Restoration of Building

1. Insurance
2. Substantial Restoration

**ARTICLE XIII**

Sale of the Property

**ARTICLE XIV**

Remedies for Breach of Covenants, Restrictions and Regulations

1. Abatement and Enjoinment
2. Enforcement By Homeowner's Association
3. Involuntary Sale

**ARTICLE XV**

General Provisions

1. Notice to Mortgage Lenders
2. Notices
3. Service of Notices on Devisees and Personal Representatives
4. Covenants to Run with Land
5. Non-Waiver of Covenants
6. Amendments to Declaration
7. Severability
8. Perpetuities and Restraints on Alienation
9. Interpretation of Declaration
10. Ownership by Trust
11. Board's Determination Binding
12. Trustee's Execution

**HIBITS:**

- A - Development Tract Legal Description
- B - Parcel Legal Description
- C - Plats of Survey
- D - Percentage Ownership of Common Elements; Assignment of Limited Common Elements

**DECLARATION OF CONDOMINIUM OWNERSHIP  
AND OF  
EASEMENTS, RESTRICTIONS, AND COVENANTS  
FOR  
"GRAUE MILL COUNTRY CONDOMINIUM III"**

---

**THIS DECLARATION** made and entered into by AMERICAN NATIONAL BANK AND TRUST COMPANY, a national banking association, not individually, but as Trustee under a Trust Agreement dated June 1, 1973 and known as Trust No. 77182 for convenience hereinafter referred to as the TRUSTEE:

**W I T N E S S E T H     T H A T :**

**WHEREAS**, the TRUSTEE acting under the direction of the parties authorized to direct the TRUSTEE has submitted certain real estate located in DuPage County, Illinois, which real estate is legally described in Exhibit "A" attached hereto and by this reference incorporated herein to the terms and provisions of certain Covenants, Conditions, and Restrictions, heretofore recorded in the Office of the Recorder of Deeds of DuPage County, Illinois, on October 1, 1976, as Document Number R76-70627 which real estate is therein and hereinafter referred to as the "Development Tract" for the purpose of developing certain residential buildings, parking areas, open green spaces, and various other recreational buildings and facilities and other amenities thereon; and

**WHEREAS**, the Development Tract may be expanded by amended Declarations as and in the manner more particularly described in said Declaration of Covenants, Conditions and Restrictions; and

**WHEREAS**, it is the desire and intention of the TRUSTEE that a certain portion of the Development Tract, legally described in Exhibit "B" attached hereto and by this reference incorporated herein and hereinafter defined and referred to as the "Parcel" together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind located thereon, and all rights and privileges belonging or in any wise pertaining thereto (hereinafter defined and referred to as the "Property") be owned by TRUSTEE and by each successor in interest of TRUSTEE under that certain type or method of ownership commonly known as "Condominium", and to submit the Property to the provisions of the "Condominium Property Act" of the State of Illinois, as amended from time to time; and

**WHEREAS**, the Trustee, acting under direction of the parties authorized to direct the TRUSTEE, has elected to establish, for the benefit of such TRUSTEE and for the mutual benefit of future owners or occupants of the Property, or any part thereof, which shall be known as "GRAUE MILL COUNTRY CONDOMINIUM III", certain easements and rights in, over and upon said premises and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

**WHEREAS**, the TRUSTEE has further elected to declare that the several owners, mortgagees, occupants, and other persons acquiring any interest in the Property shall at all times enjoy the benefit of and shall at all times hold their interests subject to the terms and provisions of the aforesaid Covenants, Conditions and Restrictions and subject to the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of ownership and to facilitate the proper administration of the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

**NOW, THEREFORE**, AMERICAN NATIONAL BANK AND TRUST COMPANY, a national banking association, as TRUSTEE aforesaid and not individually, as the legal titleholder of the real estate hereinbefore described and for the purposes above set forth, **DECLARES AS FOLLOWS:**

## ARTICLE I

### DEFINITIONS

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

**Declaration:**

This instrument by which the Property is submitted to the provisions of the Condominium Property Act of the State of Illinois, and such Declaration as from time to time amended.

**Parcel:**

That portion of the Development Tract described in Exhibit "B" attached hereto and hereby submitted to the Act.

**Building:**

The Building constructed upon the Parcel, containing the Units.

**Board:**

Board of Directors of the Condominium Association.

**Homeowners Association:**

The Graue Mill Homeowners Association consisting of all the owners of all residential units located on the Development Tract as described in the Declaration of Covenants, Conditions and Restrictions recorded in the Office of the Recorder of Deeds of DuPage County, Illinois on October 1, 1976 as Document No. R76-70627.



**Property:**

All the land, property and space comprising the Parcel, all improvements and structures constructed or contained therein or thereon, including the Building and all easements, rights and appurtenances belonging thereto, and all fixtures and property intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act.

**Unit:**

A part of the Property within the Building including the patio, courtyard and planting areas contiguous to the courtyard and patio, the enclosed garage area and one or more rooms, occupying one or more floors or a part or parts thereof, designed and intended for a one-family dwelling or such other uses permitted by this Declaration and having lawful access to a public way, all as delineated on the Plat.

**Common Elements:**

All portions of the Property except the Units.

**Unit Ownership:**

A part of the Property consisting of one Unit and the undivided interest in the Common Elements appurtenant thereto.

**Majority or Majority of Unit Owners:**

The Owners of more than 50% in the aggregate in interest of the undivided ownership of the Common Elements. Any specified percentage of the Unit Owners means such percentage in the aggregate in interest of such undivided ownership of the Common Elements.

**Person:**

A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

**Act:**

The Condominium Property Act of the State of Illinois, as amended from time to time.

**Condominium Association:**

GRAUE MILL COUNTRY CONDOMINIUM III Condominium Association, an Illinois not-for-profit corporation organized for the purpose of managing the Property.

**By-Laws:**

The provisions of Articles VII and IX of this Declaration shall constitute the initial by-laws of the Condominium Association and the by-laws prescribed by the Act.

**Unit Owners:**

The person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit.

**Plat:**

The plats of survey of the Parcel and of all Units in the Property submitted to the provisions of the Act, said plat being attached hereto as Exhibit "C" and by this reference made a part hereof and recorded simultaneously with the recording of this Declaration.

**Occupant:**

Person or Persons, other than an Owner, in possession of a Unit.

**Developer:**

GRAUE MILL SALES AND MANAGEMENT, LTD., an Illinois Corporation and its successors and assigns.

**ARTICLE II**

**SUBMISSION OF PROPERTY TO THE ACT**

1. The TRUSTEE, as the owner in fee simple of the Parcel, hereby submits the Parcel and the Property to the provisions of the Condominium Property Act of the State of Illinois. The TRUSTEE expressly intends, by recording this Declaration, to submit the Parcel and the Property to the Provisions of the Act.

2. TRUSTEE does hereby expressly intend that no part of the Development Tract except the Parcel and the Property shall be submitted to the provisions of the Condominium Property Act of the State of Illinois by this Declaration; provided, however, that Developer and/or TRUSTEE does specifically reserve the right to submit other portions of the Development Tract as the same may be constituted from time to time in accordance with the terms and provisions of the Declaration of Covenants, Conditions and Restrictions hereinabove described, to the provisions of the Act by a separate Declaration or Declarations which shall not be inconsistent with the provisions of this Declaration.

**ARTICLE III**

**PLAT**

The Plats attached hereto as Exhibit "C" and by reference made a part hereof, set forth the measurements, elevations, locations, and other data as required by the Act. Each Unit of the Building is identified on said Plat by distinguishing numbers or symbols.

## ARTICLE IV

### UNITS

1. Description of Units and Delineation of Boundaries. It is understood that each Unit consists of the space enclosed or bounded by the horizontal and vertical planes set forth in the delineation thereof in Exhibit "C" attached hereto and made a part hereof, as the space enclosed and bounded by the interior surfaces of the floors and ceilings and perimeter walls of such Unit. The legal description of each Unit shall consist of the identifying number or symbol of such Unit as shown on Exhibit "C" and every such description shall be deemed good and sufficient for all purposes. Except as provided by the Condominium Property Act, no Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause his Unit to be separated into any tracts or parcels different from the whole Unit as shown on Exhibit "C".

2. Amended Surveys. It is further understood that in the event the structural components of the Building constituting all the Unit Boundaries are not in place on the date of recording of this Declaration the TRUSTEE reserves the right to and shall cause to be recorded from time to time until all of said structural components are in place, an amended survey or surveys showing the actual locations and dimensions of the boundaries of those Units in the Building that are completed after the date of recording of this Declaration. Whenever in this Declaration the term "survey" or "surveys" appears, it shall be deemed to include such amended survey or surveys as shall be hereafter recorded pursuant to this paragraph.

3. Certain Structures Not Constituting Part of Unit. No owner shall own any pipes, fires, conduits, public utility lines or structural components running through his Unit and serving more than his Unit except as a tenant in common with all other owners.

4. Declaration of Covenants, Conditions and Restrictions. In addition to all of the terms and conditions contained in this Declaration, each Unit Owner shall hold such Unit in accordance with and subject to all provisions contained in the Declaration of Covenants, Conditions and Restrictions recorded in the office of the Recorder of Deeds, DuPage County, Illinois on October 1, 1976, as Document No. R 76-70627, as amended from time to time, all of such provisions being herein incorporated by reference.

## ARTICLE V

### COMMON ELEMENTS

1. Description of Common Elements. Except as otherwise in this Declaration provided, the Common Elements shall consist of all portions of the Property except the Units. Without limiting the generality of the foregoing, the Common Elements shall thus include the land, exterior surfaces of the entrances and exits to the Units (including exterior faces of garage doors and gates), the roof of all Buildings, structural parts of the Buildings, pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets and such component parts of walls, floors, and ceilings as are not located within the Units. Streets, roads, driveways, walkways and sidewalks contiguous to the Building shall not be Common Elements and shall be administered by the Homeowner's Association. In no event shall walkways and paths located in the courtyard area of any Unit be considered to be Common Elements.

2. **Ownership.** Each Owner shall own an undivided interest in the Common Elements as a tenant in common with all the other Owners of the Property. The extent or amount of such ownership shall be expressed by a percentage amount, and, once determined shall remain constant unless otherwise provided in the Act or unless changed with unanimous approval of all Unit Owners. Any allowable change in the extent or amount of such ownership shall be effectuated in accordance with the provisions of the Act. The TRUSTEE has so determined in accordance with the Act each Unit's corresponding percentage of ownership in the Common Elements as set forth in Exhibit "D" attached hereto. The Common Elements shall remain undivided as long as the property is subject to the provisions of the Act, and no Unit Owner shall bring any action for partition or division thereof.

3. **Non-Severability.** Except as provided in the Act or in the Declaration, no Owner shall execute any deed, mortgage, lease or other instrument affecting title to his Unit Ownership without including therein both his interest in the Unit and his corresponding percentage of ownership in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

4. **Use.** Each Unit Owner shall have the right to use the Common Elements in common with all other Unit Owners, for the purposes of access and ingress and egress to, and for all other purposes incident to his use, occupancy and enjoyment of his Unit as a place of residence and for such other uses permitted by this Declaration. Such right to use the Common Elements shall extend to each Unit Owner, the members of the immediate family of each Unit Owner, and the tenants, guests and other authorized occupants and visitors of each Unit Owner. Such right to use the Common Elements shall be subject to and governed by the provisions of the Act and of this Declaration and By-Laws herein and the rules and regulations of the Association hereinafter referred to. Each Unit Owner shall be deemed to have an easement, in common with the other Unit Owners, which right shall be appurtenant to and run with his Unit, in, upon, across, over, through and with respect to the Common Elements to the extent of such right to use the Common Elements.

5. **Easements.** (a) **Encroachments:** In the event that, by reason of the construction, settlement or shifting of the Building, any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Elements or any other Unit, or, if by reason of the design or construction of any Unit, it shall be necessary or advantageous to an Owner to use or occupy any portion of the Common Elements for any reasonable use appurtenant to said Unit which will not unreasonably interfere with the use or enjoyment of the Common Elements by other Unit Owners, or, if by reason of the design or construction of utility and ventilation systems, any main pipes, ducts or conduits serving more than one Unit encroach or shall hereafter encroach upon any part of any Unit, valid mutual easements shall exist in favor of the Owners of the Common Elements and the respective Unit Owners involved to the extent of the encroachment; provided, however, that in no event shall a valid easement be created in favor of any Owner who creates an encroachment by his intentional, willful or negligent conduct or that of his agent.

(b) Common Elements Located Inside of Units. Each Unit Owner shall have an easement in common with all other Unit Owners to use and repair as necessary, through the Association, all pipes, wires, ducts, cables, conduits, chimneys, public utility lines and other elements located in any of the Units or Common Elements. Each Unit shall be subject to an easement in favor of other Unit Owners to use and repair as necessary, through the Association, the pipes, ducts, cables, wires, conduits, chimneys, public utility lines and other elements located in each such Unit. In addition, each Unit shall be subject to, and shall have, such easements of support and shelter from and over such other Units as may be necessary for the quiet enjoyment of such Unit and necessary for the continuance and maintenance of structural Common Elements. The Board of Directors shall have the right to reasonable access to each Unit to inspect the same, to remove violations therefrom and shall have the obligation to maintain, repair or replace the elements necessary for the preservation of the facilities which are the objects of the aforesaid easements, and the elements common to it and other Units or Common Elements contained therein or elsewhere in the buildings and to maintain, repair or replace such other equipment or elements as may be the Association's responsibility.

(c) Utility Easements. The Illinois Bell Telephone Company, Northern Illinois Gas Company, Commonwealth Edison Company and all other public and private utilities serving the Property are hereby granted the right to lay, construct, renew, replace, repair, operate and maintain conduits, cables, pipes, wires, transformers, switching apparatus, and other equipment into and through the Common Elements for the purpose of providing utility services to the Property provided such easements do not unreasonably interfere with structures located on the Parcel or the use thereof.

(d) Maintenance. The Condominium Association shall be responsible for all the maintenance and repair of Common Elements located upon any portion of the Parcel; provided however, that the Board may make such arrangements or agreements as it deems satisfactory with the Homeowners Association to provide such services to the Condominium Association. A perpetual easement is hereby granted to all members of the Homeowner's Association and their families, guests and invitees to use any Common Elements for reasonable ingress and egress to the Building.

(e) Roadway and Other Easements. In addition to the foregoing, there is hereby specifically incorporated by reference all easements regarding roadways and other structures as set forth in Article XIII of the Declaration of Covenants, Conditions and Restrictions recorded in the Office of the Recorder of Deeds, DuPage County, Illinois on October 1, 1976, as Document No. R 76-70627, as amended from time to time.

(f) Easements to Run with Land. All easements and rights described herein are easements appurtenant, running with the land, perpetually in full force and effect so long as the Property is subject to the provisions of this Declaration, and at all times shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any Unit Owner, Purchaser, mortgagee and other person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such Unit Ownerships as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

6. Alterations, Additions and Improvements. No alterations of any Common Elements or any additions or improvements thereto shall be made by any Unit Owner without the prior written approval of the Association.

## ARTICLE VI

### MAINTENANCE AND REPAIRS

1. **Repairs.** Each Unit Owner shall furnish, and be responsible for, all maintenance, repairs and replacements within his own Unit, and of all windows in his own Unit, and all gates directly outside of and adjoining his own Unit, and the walkways or paths located in the courtyard area of his own Unit; provided, however, that the Association may by rules and regulations provide for ordinary maintenance and minor repairs and replacements to be furnished to Units by building personnel at common expense. Maintenance, repairs and replacements of the Common Elements shall be furnished by the Association, and the cost of such maintenance, repairs and replacements performed by the Board shall be at common expense.

2. **Decorating.** Each Unit Owner shall also furnish, and be responsible for, at his own expense, all of the decorating within his own Unit from time to time, including but not limited to painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains and other furnishings and interior decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings which constitute the interior boundaries of the respective Unit owned by such Unit Owner, and shall maintain such interior surfaces in good condition at his sole expense subject to the rules and regulations of the Association. The interior and exterior surfaces of all windows, gates and doors forming part of a perimeter wall of a Unit shall be cleaned or washed at the expense of each Unit Owner. The use and covering of the interior surfaces of such windows, whether by draperies, shades, or other items visible from the exterior of the Building shall be subject to the rules and regulations of the Association. Any redecorating of a Unit made necessary by any damage caused by maintenance, repair or replacement work on the Common Elements by the Association shall be furnished by the Association as part of the common expenses.

3. **Responsibility for Damages.** Maintenance, repairs, decoration and replacements to the Units shall be subject to the rules and regulations of the Association. If, due to the negligent act or omission of a Unit Owner, or of a member of his family, or household pet, or of a guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the common expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association. Maintenance, repairs and replacements to the Common Elements or the Units shall be subject to the rules and regulations of the Association.

4. **Utilities.** Each Unit Owner shall pay for his own telephone and electricity or other utilities which are separately metered or billed to each user by the respective utility company. Utilities which are not separately metered or billed shall be treated as part of the common expense.

## ARTICLE VII

### ADMINISTRATION

1. **Administration of Property.** The direction and administration of the Property shall be vested in a Board of Directors (herein referred to as the "Board"), consisting of three (3) persons who shall be elected in the manner hereinafter provided. Each member of the Board shall be one of the Owners, who shall reside on the Property; provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any officer, director or other designated agent of such corporation, partner or other designated agent of such partnership, beneficiary or other designated agent of such Trust or manager of such legal entity, shall be eligible to serve as a member of the Board, if such person resides on the property, except that the requirement of residence shall not apply for a Board member nominated by the TRUSTEE.
2. **Administration Prior to Election of Board.** Prior to the time established by this Declaration for the initial meeting of the voting members, the rights, titles, powers, privileges, trusts, duties, functions and obligations vested or imposed upon the Board by this Declaration and in the Act shall be held and performed by the Developer. The Developer may, prior to the election of the first Board, assess each Unit Owner a maintenance fee based on expenses actually incurred during such period.
3. **Association.** The TRUSTEE, upon the sale of one or more Units, and prior to the election of the first Board, and the Board at any time thereafter, may cause to be incorporated a not-for-profit corporation under the General Not-For-Profit Corporation Act of the State of Illinois, to be called "GRAUE MILL COUNTRY CONDOMINIUM III" or a name similar thereto, which corporation (herein referred to as the "Association") shall be the governing body for all the Unit Owners for the maintenance, repair, replacement, administration and operation of the Property. The Board of Directors of the Association shall be deemed to be the "Board of Managers" referred to herein and in the Condominium Property Act. Upon the formation of such Association, every Unit Owner shall be a member thereof, which membership shall automatically terminate upon the sale, transfer or other disposition by such member of his Unit Ownership, at which time the new Unit Owner shall automatically become a member thereof. The Association may issue certificates evidencing membership therein, and the Association shall have one class of membership.
4. **Voting Rights.** There shall be one person with respect to each Unit Ownership who shall be entitled to vote at any meeting of the Unit Owners. Such person shall be known and hereinafter referred to as a "voting member". Such voting member may be the Owner or one of the group composed of all the Owners of a Unit Ownership, or may be some person designated by such Owner or Owners to act as proxy on his or their behalf and who need not be an Owner. Such designation shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Owner or Owners. Any or all of such Owners may be present at any meeting of the voting members and (those constituting a group acting unanimously) may vote or take any other action as a voting member either in person or by proxy. Voting shall be on a percentage basis, and the percentage vote to which each voting member is entitled is the percentage interest of the undivided ownership of the Common Elements applicable to the Unit such voting member represents as set forth in Exhibit D, provided however, that in connection with all matters, including but not limited to the election of directors, where the requisite approval on a percentage basis is not specified in the Act voting shall be done on the basis of one vote per Unit, and such voting shall be done on a cumulative voting basis if so specified elsewhere in this Declaration. The TRUSTEE or the Developer or anyone designated in writing by the TRUSTEE or the Developer shall be the voting member with respect to any Unit Ownership owned by the TRUSTEE.

**5. Meetings of Voting Members.**

**(a) In General**

Meetings of the voting members shall be held at the Property or at such other place in DuPage County, Illinois, as may be designated in any notice of a meeting. At any meeting of the voting members, the presence in person or by proxy of the voting members having a majority of the total votes shall constitute a quorum. Except as otherwise required by the terms of this Declaration or the Condominium Property Act of Illinois, any action may be taken at any meeting of the voting members at which a quorum is present upon the affirmative vote of the voting members having a majority of the total votes present at such meeting.

**(b) Annual Meeting**

The initial meeting of the voting members shall be held upon written notice given by the Developer. Such initial meeting shall be held not later than sixty (60) days after the conveyance by the TRUSTEE or Developer of 75% of the Units or three (3) years after the recording of the Declaration, whichever is earlier. Within sixty (60) days following such meeting, the Developer shall deliver to the Board all documents, records and funds required by the Act. Thereafter, there shall be an annual meeting of the voting members, one of the purposes of which shall be to elect members of the Board, on the first Thursday of October of each succeeding year thereafter at 8:00 p.m. or at such other reasonable time or date (not more than thirty (30) days before or after such date) as may be designated by written notice of the Board.

**(c) Special Meetings**

Special Meetings of the voting members may be called at any time after the initial meeting of the voting members for the purpose of considering matters which by the terms of this Declaration require the approval of all or some of the voting members or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by a majority of the Board, or by the president, or by 20% of the Unit Owners.

**(d) Significant Actions**

No merger or consolidation of the Association; sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the property and assets of the Association; or purchase or sale of land or of Units on behalf of all Unit Owners shall be effectuated unless there is an affirmative vote of two-thirds (2/3) of the votes of the Unit Owners at a meeting duly called for that purpose, except as otherwise provided in the Act.

**(e) Notices of Meetings**

Notices of meetings of the voting members may be delivered either personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Unit of the Owner with respect to which such voting right appertains, if no address has been given to the Board. Such notice must give members no less than ten (10) nor more than thirty (30) days notice of the time, place and purpose of such meeting.



6. Election and Term of Board. At the initial meeting the voting members shall elect the Board. In all elections for members of the Board each voting member shall be entitled to vote on a cumulative voting basis, and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. A majority of the total number of the members on the Board shall constitute a quorum. Members of the Board elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting the three (3) Board members shall be elected. The individual persons receiving the highest number of votes at the first annual meeting shall be elected to the board for a term of two (2) years, the two (2) individuals receiving the next highest number of votes shall be elected to the Board for a term of one (1) year. Upon the expiration of the terms of office of the Board members so elected at the first annual meeting and thereafter, successors shall be elected for a term of two (2) years each. Board members may succeed themselves. The voting members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease such number of persons on the Board or may increase or decrease the term of office of the Board members at any annual or special meeting, provided that such number shall not be less than three (3), that the terms of at least one-third (1/3) of the persons on the board shall expire annually, and that no term may be for more than two (2) years. Members of the Board shall receive no compensation for their services, unless expressly allowed by the Board at the direction of the voting members having at least two-thirds (2/3) of the total votes, but directors may be reimbursed for actual expenses incurred in the performance of their duties as directors. Vacancies on the Board, including vacancies due to any increase in the number of persons on the Board or removal of members of the Board, shall be filled by the voting members present at the next annual meeting or at a special meeting of the voting members called for such purpose; except that prior to the initial meeting of the voting members (in the event that the Association incorporated before such meeting), vacancies shall be filled by the Developer. Any director so elected or appointed to fill a vacancy shall hold that office for a term equal to the unexpired term of the director whom he succeeds. Except as otherwise provided in this Declaration, the Property shall be managed by the Board and the Board shall act by majority vote of those present at its meetings when a quorum exists.

7. Meetings of Board.

(a) The Board shall meet at least four (4) times annually, one of the meetings to be held within ten (10) days following the regular annual meeting of Unit Owners. Written notice stating the date, time and place of regular meetings shall be delivered, either personally or by mail or telegram, to a director at the address given to the Board by said director for such purpose not less than forty-eight (48) hours prior to the date of each such meeting.

(b) Special meetings of the Board shall be held upon a call by the President or by a majority of the directors on not less than forty-eight (48) hours' notice in writing to each director, delivered personally or by mail or telegram at the address given to the Board by said director for such purpose.

(c) Any director may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action of the Board without a meeting. A director's attendance at a meeting shall constitute his waiver of notice of said meeting.

(d) All meetings of the Board, whether regularly scheduled or specially called, shall be open to all Unit Owners. Except where such meetings concern the adoption of the proposed annual budget or any increase or establishment of an assessment, notice of each such meeting shall be mailed to each Unit Owner not less than forty-eight (48) hours prior thereto, unless a written waiver of such notice is signed by the persons entitled to such notice before the meeting is convened. With respect to those meetings of the Board where budget or assessment matters are on the agenda, all Unit Owners shall receive written notice of such meetings in the same manner provided in this Declaration for membership meetings.

8. **Removal of Board Members.** Any Board member may be removed from office with or without cause by affirmative vote of the voting members having at least two-thirds (2/3) of the total votes at any special meeting called for that purpose; except that prior to the initial meeting of the voting members (in the event that the Association is incorporated before such meeting), the Developer shall have the power to so remove any Board member.

9. **Officers.**

(a) At each regular Board meeting following the regular annual meeting of Unit Owners, the directors present at said meeting (provided a quorum is present) shall elect the following officers of the Association by a majority vote:

1. a President, who shall be a director, and who shall preside over the meetings of the Board and of the Unit Owners, and who shall be the chief executive officer of the Association;

2. a Secretary, who shall be a director, and who shall keep the minutes of all meetings of the Board and of the Unit Owners, and who shall be designated to mail and receive all notices and execute all amendments to the condominium instruments as provided for in the Act, and who shall, in general, perform all the duties incident to the office of Secretary;

3. a Treasurer, who shall be a director, and who shall be responsible for financial records and books of account and the manner in which such records and books are kept and reported;

4. such additional officers as the Board shall see fit to elect.

(b) The respective officers shall have the general powers usually vested in such officers, provided that the Board may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board may see fit.

(c) Each officer shall hold office for the term of one year and until his successor shall have been appointed or elected and qualified. Officers may be elected to succeed themselves.

(d) Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a special meeting of said Board. Any officer so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer whom he succeeds. Any officer may be removed for cause at any time by a majority of the Board at a special meeting therefor.

(e) The officers shall receive no compensation for their services, unless expressly provided for in a resolution duly adopted at any annual or special meeting of the Unit Owners.

10. Powers and Duties of Board. The Board shall have the following additional powers and duties:

(a) To engage the services of an agent to manage the Property to the extent deemed advisable by the Board. The Developer shall engage the initial management organization under a contract expiring not later than two (2) years after the recording of this Declaration.

(b) To formulate policies for the administration, management and operation of the Property.

(c) To adopt such reasonable rules and regulations as it may deem advisable governing the administration, management, maintenance, operation, use, conservation and beautification of the Property and for the health, comfort, safety and general welfare of the Unit Owners and Occupants and to amend such rules and regulations from time to time. Written notice of such rules and regulations shall be given to all Owners and Occupants and the entire Property shall at all times be maintained subject to such rules and regulations.

(d) To operate, provide for any construction, care, upkeep, alteration, installation, maintenance, repair, painting, improvement and replacement of Common Elements for which the Board is responsible under the Declaration and By-Laws, and for maintenance and repair of any Unit if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Elements, or any portion of the Property or any Unit. If the Board has engaged the services of an agent to manage the Property, it shall have the authority to direct the managing agent to dismiss any of said agent's employees upon the Board's specification of reasonable grounds for directing such a dismissal. If the Owner of any Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered by the Board to said Owner, the Board shall cause such maintenance or repairs to be performed and shall assess the cost thereof to such Owner.

(e) Upon reasonable notice to enter or authorize its agents to enter any Unit in said Building when necessary in connection with any maintenance or construction for which the Board is responsible. The Board or its agent may likewise enter any Limited Common Element for maintenance, repairs, construction or painting. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund. In the event of any emergency originating therein, or threatening any Unit or threatening any of the Common Elements, or in the event of the Owner's absence from the Unit at a time when required alterations or repairs are scheduled or necessary, the management agent or his representative or any other person designated by the Board may enter the Unit immediately, whether the Owner is present or not.

(f) To keep detailed accurate records of the receipts and expenditures affecting the use and operation of the Property, to prepare, adopt and distribute the annual budget, and to assess and collect from the Unit Owners their respective shares of such budget as hereinafter provided.

(g) To pay from the maintenance fund hereinafter provided for all expenses incurred for the following:

1. Water, waste removal, garage operating expense, if any, professional management fees, electricity, gas and telephone and other necessary utility services for the Common Elements and (if not separately metered or charged) for the Units.

2. All policies of insurance as designated in the Declaration and hereinafter described, except as may otherwise be provided in this Declaration.

3. The services of any person or firm employed by the Board. The Board, at its discretion, may employ the services of any person or firm to act on behalf of the Owners in connection with real estate taxes and special assessments on the Unit Ownerships and in connection with any other matter where the respective interests of the Unit Owners are deemed by the Board to be similar and non-adverse to each other. The cost of such services shall be common expenses.

4. Painting, cleaning, tuckpointing, maintenance, decorating, repair and replacement of the Common Elements and such equipment for the Common Elements as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the Common Elements.

5. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or assessments which the Board is required to secure or pay for pursuant to the terms of this Declaration and By-Laws or which in its opinion shall be necessary or proper for the maintenance and operation of the Property as a first-class condominium complex or for the enforcement of these restrictions.

6. Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the entire Property or any part thereof which may in the opinion of the Board constitute a lien against the Property or against the Common Elements, rather than merely against the interests therein of particular Owners.

7. The Board may elect to have the cost of any or all of the goods and services described in the foregoing paragraphs 1 through 6 inclusive assessed to each Owner in proportion to his use of or benefit from such goods and services.

(h) To make such arrangements as it may deem desirable with the Homeowners Association to provide for the collection from the Unit Owners of their respective shares of the estimated expenses of the Homeowners Association in accordance with the budget prepared by said Association; and to make further desirable arrangements, in conjunction with one or more Condominium Associations administering one or more buildings located on the Development Tract, with the Homeowners Association to provide for the collection from the Unit Owners of their respective shares of the estimated expenses of the Condominium Association. It shall not be obligatory upon the Board to make any such arrangements.

(i) To own, convey, encumber, lease and otherwise deal with Units conveyed to or purchased by the Board. All rental or debt service paid by the Board or the Association pursuant to a lease or mortgage shall be a common expense. All maintenance, utility and other charges paid by the Board or the Association in regard to the Unit or Units so leased, purchased or mortgaged shall be a common expense.

(j) All agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board, and such documents shall be signed by the Treasurer and countersigned by the President of the Board.

(k) The Board's powers hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any structural alterations, capital additions to, or capital improvements of the Common Elements (other than for purposes of replacing or restoring portions of said Common Elements, subject to all the provisions of this Declaration) requiring an expenditure in excess of Ten Thousand Dollars (\$10,000.00) without, in each case, the prior approval of the voting members having at least two-thirds (2/3) of the total votes.

(l) Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all the Owners or any of them.

11. Liability of the Board. The members of the Board, the TRUSTEE and the Developer shall not be personally liable to the Owners or others for any mistake of judgment or for any acts or omissions made in good faith as such Board members or acting as the Board. The Owners shall indemnify and hold harmless each of the members of the Board, the TRUSTEE and the Developer against all contractual liability to others arising out of any contracts made by the Board, the TRUSTEE or the Developer on behalf of the Owners unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration. It is also intended that the liability of any Owner arising out of any contract made by the Board, the TRUSTEE and the Developer shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Elements bears to the total percentage interest of all the Owners in the Common Elements. Every agreement made by the Board, the TRUSTEE and the Developer or the managing agent on behalf of the Owners shall provide that the members of the Board, the TRUSTEE and the Developer or the managing agent, as the case may be, are acting only as agents for the Owners and shall have no personal liability thereunder (except as Owners) and that each Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Elements bears to the total percentage interest of all Owners in the Common Elements.

12. Amendment of Article VII. Amendments to this Article VII may be effectuated in the manner prescribed in Section 6 of Article XV of this Declaration.

## ARTICLE VIII

### INSURANCE

The Board shall have the authority to and shall obtain for the benefit of all the Owners and shall pay for out of the Maintenance Fund hereinafter provided for, the following:

1. A policy or policies of insurance insuring the Common Elements and the Units against loss or damage by the perils of fire, lightning and those contained in the standard extended coverage, vandalism and malicious mischief endorsements for the full insurable replacement value of the Common Elements and the Units written in the name of and with the proceeds thereof payable to the Members of the Board, as Trustees for each of the Owners in the percentages established in Exhibit "D". Prior to obtaining such policy or policies of insurance, or any renewal thereof, the Board shall obtain an appraisal from a qualified appraiser for the purpose of determining the full replacement value of the Common Elements and the Units in order to establish the amount of insurance to be obtained pursuant hereto. The cost of any and all such appraisals shall be common expenses. All such policies of insurance: (a) shall contain standard mortgage clause endorsements in favor of the mortgagee or mortgagees of each Unit, if any, as their respective interests may appear; (b) shall provide that the insurance, as to the interest of the Board, shall not be invalidated by any act or neglect of any Owner; (c) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement thereof, such option shall not be exercisable in the event the Owners elect to sell the Property or remove the Property from the provisions of the Condominium Property Act; and (d) shall contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least ten (10) days prior written notice to the mortgagee of each Unit. Notwithstanding the issuance of standard mortgage clause endorsements, any losses under such policies of insurance shall be payable, and all insurance proceeds recovered thereunder shall be applied and disbursed in accordance with the provisions of this Declaration and the Condominium Property Act.

2. The Board shall not be responsible for obtaining insurance on any additions, alterations or improvements made by any Unit Owner to his Unit unless and until such Unit Owner shall request the Board in writing so to do, and shall make arrangements satisfactory to the Board to reimburse the Board for any additional premiums attributable thereto. If a Unit Owner fails to inform the Board as provided above, and a penalty is assessed in the adjustment of loss settlement or any deficiency in any insurance loss recovery results from such failure, the Unit Owner shall be responsible for such penalty or deficiency.

3. The Board may engage the services of a bank or Trust Company authorized to do trust business in the State of Illinois and having a capital of not less than \$5,000,000 to act as Insurance Trustee and to receive and disburse insurance proceeds resulting from any loss upon such terms as the Board shall determine consistent with the provisions of this Declaration. In the event the lowest of three (3) bids from reputable contractors for making all repairs required by any such loss shall exceed \$50,000.00, in the aggregate, the Board upon written demand of the mortgagee of any Unit shall engage the services of an Insurance Trustee as aforesaid. The fees of such Insurance Trustee shall be common expenses.

4. Comprehensive public liability and property damage insurance as the Board deems desirable, insuring the Developer and Unit Owners, individually and severally, as required by the Act, the Association, members of the Board, the managing agent, if any, their agents and employees, the officers of the Association and the TRUSTEE (Declarant) individually and as TRUSTEE as aforesaid from any liability in connection with the Property or any property owned by the Homeowners Association adjoining the Property over which the Association maintains any control or for which the Association shall have any responsibility or liability. Such insurance coverage shall also cover cross liability claims of one insured against another. The insurance shall contain a waiver of any rights to subrogation by the insuring company against any of the above named insured persons.

5. Workmen's compensation insurance in such forms and amounts as is statutorily prescribed;

6. Such other insurance as the Board in its judgment shall deem necessary.

7. Any insurance premiums assessed on a basis reflecting increased charges for coverage on certain Units shall be assessed to such Units.

8. The Board shall notify insured persons concerning the cancellation of insurance obtained pursuant to this Article.

## ARTICLE IX

### ASSESSMENTS - MAINTENANCE FUND

1. Each year on or before December 1, the Board shall adopt an annual budget estimating the common expenses and other cash requirements for the ensuing calendar year, including wages, materials, insurance, services and supplies, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements (against which reserve extraordinary expenditures not included in the budget which may become necessary during the year shall first be charged). The budget shall also take into account the estimated net available cash income for the year from operation or use of the Common Elements. The aforementioned items shall be set forth in the budget with particularity. Said estimated cash requirement as set forth in said budget shall be assessed to the Owners according to each Owner's percentage of ownership in the Common Elements as listed in Exhibit "D", except as otherwise provided in this Declaration, and such assessment to each Owner shall also be set forth in the budget with particularity. Each Unit Owner shall receive, at least thirty (30) days prior to the adoption thereof by the Board, a copy of the proposed annual budget.

2. Each year on or before December 15, the Board shall notify each Owner in writing as to the amount of such assessment and each Owner's annual share thereof computed in the manner set forth herein, together with a reasonable itemization with respect thereto.

3. On or before January 1 of the ensuing year, and the first of each and every month thereafter of said year, each Owner, jointly and severally, shall be personally liable and obligated to pay to the Board, or as it may direct, one-twelfth (1/12) of the assessment for that Owner's Unit made pursuant to this Article. On or before April 1 of each calendar year following the initial meeting, the Board shall supply to all Owners an itemized accounting of the common expenses for the previous calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget and assessment, and showing the net excess or deficit of income over expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited, according to each Owner's percentage of ownership in the Common Elements or as otherwise provided in this Declaration, to the next monthly installments due from each Owner under the current year's budget, until exhausted. Any net shortage shall be added, according to each Owner's percentage of ownership in the Common Elements or as otherwise provided in this Declaration, to the installments due in the succeeding six months after rendering of the accounting.

4. In the event that during the course of any year, it shall appear to the Board that the monthly assessments, determined in accordance with the budget for such year, are insufficient or inadequate to cover the estimated common expenses for the remainder of such year, or in the event any nonrecurring common expense is anticipated for any year, then the Board may prepare and approve a supplemental budget covering the estimated deficiency or nonrecurring expense for the remainder of such year, copies of which supplemental budget shall be furnished to each Unit Owner, and thereupon a separate assessment shall be made to each Unit Owner for his proportionate share of such supplemental budget. Any such separate assessment, if it involves proposed expenditures resulting in a total assessment to a Unit which equals or exceeds the greater of five times the Unit's most recent monthly assessment or Three Hundred (\$300.00) Dollars, shall be subject to the affirmative vote of at least two-thirds (2/3) of the total ownership of the Common Elements at a meeting specially called for approving such separate assessment.

5. The initial budget and common expense assessment based thereon shall be adopted prior to the first conveyance of a Unit by the Trustee or Developer, for a period commencing on a date prior to said first conveyance and ending on the next succeeding December 31.

6. The failure or delay of the Board to prepare or serve the annual or supplemental budget on the Owners shall not constitute a waiver or release in any manner of such Owner's obligation to pay the assessments herein described including the common expenses and necessary reserves for the Association as herein provided, whenever the same shall be determined, and in the absence of the annual or supplemental budget, the Owner shall continue to pay the monthly assessment at the then existing monthly rate established for the previous period until the monthly assessment which is due more than ten (10) days after such new annual or supplemental budget shall have been mailed or delivered.

7. The Board shall keep full and correct books of account in chronological order of the receipt and expenditures affecting the Common Elements specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred. Such records and vouchers authorizing the payments shall be available for inspection by any Owner and any representative of any Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Owner. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Owner shall be furnished a statement of his account which sets forth the amount of any unpaid assessments or other charges due and owing from such Owner.

8. All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such adjustments as need be required to reflect delinquent or prepaid assessments and except as otherwise provided in this Declaration), shall be deemed to be held for the benefit, use and account of all of the Owners according to their respective interests therein, in the percentages set forth in Exhibit "D".

9. If an Owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the members of the Board may bring suit for and on behalf of themselves and as representatives of all Owners to enforce collection thereof or to foreclose the lien therefore as hereinafter provided; and there shall be added to the amount due the costs of said suit, and other fees and expenses together with legal interest and reasonable attorneys' fees to be fixed by the Court. To the extent permitted by any decision or any statute or law now or hereafter effective, the interest, costs and fees as above provided shall be and become a lien or charge against the Unit Ownership of the Owner involved when payable and may be foreclosed by an action brought in the names of the Board as in the case of foreclosure of liens in real estate. Said lien shall take effect and be in force when and as provided in the "Condominium Property Act" of Illinois; provided, however, that encumbrances owned or held by any bank, insurance company, savings and loan association or any other lending entity shall be subject as to priority after written notice to said encumbrancer of unpaid assessments only to the lien of all assessments on the encumbered Unit which become due and payable subsequent to the date said encumbrancer either takes possession of the Unit, accepts a conveyance of any interest in the Unit Ownership, or has a receiver appointed in a suit to foreclose its lien. Any encumbrancer may from time to time request in writing a written statement from the Board setting forth the unpaid assessments with respect to the Unit Ownership covered by such encumbrance and unless the request shall be complied with within twenty (20) days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien of such encumbrance.



10. Amendments to this Article IX may be effectuated in the manner provided in Section 6 of Article XV of this Declaration. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common elements or abandonment of his Unit.

## ARTICLE X

### COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The Units and Common Elements shall be occupied and used as follows:

1. No part of the Property shall be used for other than housing and related common purposes for which the Property was designed (except that portion of each Unit designed for the storage of automobiles may be used for that purpose). The Board and the Board of Directors of the Homeowners Association may limit Owner's use of any portion of the Unit to the extent either body determines such use adversely affects the architectural continuity of the design of the Building. Each Unit (and any two or more adjoining Units that have been combined and any portion of a Unit that has been subdivided pursuant to this paragraph) shall be used as a residence for a single family or such other uses permitted by this Declaration and for no other purpose. Units may be altered or combined or subdivided in accordance with and in the manner set forth in the Act, provided that such alteration, combination or subdivision is permitted under all applicable local laws and ordinances.

2. There shall be no obstruction of the Common Elements. Each Owner shall be obligated to maintain and keep in good order and repair his own Unit.

3. Nothing shall be done or kept in any Unit which will increase the rate of insurance on the Building or contents thereof applicable for residential use, without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his Unit which will result in the cancellation of insurance on the Building, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Elements.

4. Each Unit Owner shall be responsible for obtaining and maintaining his own insurance on his Unit (which insurance shall not be in lieu of such insurance as is procured by the Board in conformity with the provision of this Declaration) and on the furnishings, personal property and other contents therein, his personal property stored elsewhere on the Property and his personal liability to the extent not covered by the liability insurance for all the Owners obtained by the Board as hereinbefore provided.

5. Owners shall not cause or permit anything to be placed on or hang from the outside walls of the Building or the face of any exit, entrance, gate, or garage door, and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls of the Building or roof or any part thereof by Owners without the prior consent of both the Board and the Board of Directors of the Homeowners Association.

6. The use and the covering of the interior surfaces of all windows or gates forming part of the perimeter wall of the Building whether by draperies, shades or other items visible from the exterior of the Building, shall be subject to such rules and regulations as may be established by the Board, except that such draperies, shades or other items shall be uniform for all Units as to color. The Developer shall select the color visible from the exterior of the Building to be used by the initial purchasers of all Units.

7. No animals, rabbits, livestock, reptiles, fowl, or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Elements, except that dogs, cats, or other household pets weighing not in excess of 25 pounds when fully grown may be kept in the Units subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purpose; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days' written notice from the Board.

8. No unlawful, noxious, immoral or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or Occupants.

9. Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity of the Building or which would structurally change the Building except as is otherwise provided herein.

10. To assure adequate soundproofing between floors, owners are required to meet certain specifications regarding floor coverings installed by them. These specifications are contained in rules adopted by the Homeowners Association or, prior to incorporation of Homeowners Association, by Developer.

11. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Units or the Common Elements. The Common Elements and Units shall be kept free and clear of rubbish, debris and other unsightly materials. Trash, garbage and other wastes shall be kept only in enclosed sanitary containers (of such type, color, composition and design as may be determined by the Board) and shall be disposed of in a clean, sightly, healthy and sanitary manner and as may be prescribed from time to time by the rules and regulations of the Board.

12. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploitation, or otherwise, shall be conducted, maintained, or permitted in any Unit.

13. No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Property except at such location and in such form as shall be determined by the Board. The right is reserved by the Developer, or its agents, to place and maintain on the Property until the completion of the sale of the last residential unit to be constructed on the Development Tract as the same may be constituted from time to time, all models, sales offices, advertising signs and banners and lighting in connection therewith and to conduct its promotional and sales activities at such locations and in such forms as shall be determined by the Developer. There is also reserved unto the Developer, its agents and prospective Unit purchasers, the right of ingress, egress and transient parking in and through the Common Elements for all purposes set forth in this Paragraph 13.

14. After completion of construction of the Building, nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board.

15. The Unit restrictions in Paragraphs 1 and 13 of this Article X shall not, however, be construed in such a manner as to prohibit an Owner from:

- (a) Maintaining his personal professional library therein;
- (b) Keeping his personal business or professional records or accounts therein; or
- (c) Handling his personal business or professional telephone calls or correspondence therefrom.

Such uses are expressly declared customarily incident to the principal residential use and not in violation of Paragraphs 1 or 13 of this Article X.

16. During the period of construction of the Building on the Property by the Developer, the Trustee and its beneficiaries, the Developer, all contractors and sub-contractors, and their respective agents and employees shall be entitled to all access, ingress and egress to said Building and Property as may be required in connection with said construction. During the period in which the sale of residential units in the Development Tract as the same is constituted from time to time by the Developer, the beneficiaries of the TRUSTEE or their agents are in progress, the Developer, TRUSTEE's beneficiaries or their agents may occupy or grant permission to any person or entity to occupy, with or without rental, as determined by the Developer, the TRUSTEE, said beneficiaries or said agents, one or more Units for business or promotional purposes, including clerical activities, sales offices, model units for display and the like.

17. Both the Board and the Board of Directors of the Homeowners Association are hereby authorized to enforce the provisions of this Article X in regard to any Unit Owner.

## ARTICLE XI

### SALE, LEASING OR OTHER ALIENATION

1. Sale or Lease. (a) Any Owner, other than the Trustee, who wishes to sell or lease his Unit Ownership (or any lessee of any Unit wishing to assign or sublease such Unit) shall give to the Board not less than thirty (30) days prior written notice of the terms of any contemplated sale or lease in the form of the proposed contract of sale, lease or sublease to be executed as part of such sale or lease, together with the name and address of the proposed purchaser or lessee, and his or their financial and character references and such other information concerning the proposed purchaser or lessee as the Board may reasonably require. The members of the Board, acting on behalf of the other Unit Owners, shall at all times have the first right and option to purchase or lease such Unit Ownership upon the same terms as the proposed sale or lease, which option shall be exercisable for a period of thirty (30) days following the date of receipt of such notice. If said option is not exercised by the Board within the aforesaid thirty (30) days or if said option is properly waived, the Unit Owner (or Lessee) may, at the expiration of said thirty (30) day period and at any time within ninety (90) days after the expiration of said period, contract to sell or lease (or sublease or assign) such Unit Ownership to the proposed purchaser or lessee named in such notice upon the terms specified therein. If the Owner (or lessee) fails to close said proposed sale or lease transaction within said ninety (90) days, his Unit Ownership shall again become subject to the Board's right to first refusal as herein provided.

(b) Any person acquiring ownership of or a lease with respect to any Unit shall be bound by and shall be subject to all of the obligations and all of the terms and provisions herein contained relative to such Unit. With respect to a lease or sublease of any Unit, the lease shall expressly provide that the lessee shall be bound by all of the provisions herein contained. In the event that any Unit Owner or Lessee of any Unit shall lease or sublease any Unit, a true and correct copy of such lease or sublease shall be lodged with the Board, and any Unit Owner or Lessee of any such Unit making any such lease shall not be relieved thereby from any of his obligations as herein imposed. Upon the expiration of or termination of any such lease, or in the event of any attempted subleasing thereunder, the provisions hereof with respect to the Board's right of first refusal shall again apply to such Unit Ownership.

(c) The Board may adopt rules and regulations from time to time, not inconsistent with the foregoing provisions, for the purpose of implementing and affectuating the foregoing provisions.

2. Gift. (a) Any Unit Owner, other than the TRUSTEE, who wishes to make a gift of his Unit Ownership or any interest therein shall give to the Board not less than ninety (90) days written notice of his or her intent to make such gift prior to the contemplated date thereof, together with the name, address and financial and character references of the intended donee and such other information concerning the intended donee as the Board may reasonably require and the contemplated date of said gift. The members of the Board, acting on behalf of the Unit Owners, shall at all times have the first right and option to purchase such Unit Ownership or interest therein for cash at fair market value to be determined by arbitration as hereinafter provided, which option shall be exercisable until the date of expiration as provided herein.

(b) Within fifteen (15) days after receipt of said written notice by the Board, the Board and the Unit Owner desiring to make such gift shall each appoint a qualified real estate appraiser to act as arbitrators. The two arbitrators so appointed shall, within ten (10) days after their appointment, appoint another qualified real estate appraiser to act as the third arbitrator. Within fifteen (15) days after the appointment of the third arbitrator, the three arbitrators shall determine, by majority vote, the fair market value of the Unit Ownership or interest therein which the Unit Owner contemplates conveying by gift, and shall thereupon give written notice of such determination to the Unit Owner and the Board. If either party shall fail to select an appraiser, then the appraiser designated by the other party shall make the appraisal. The Board's option to purchase the Unit Ownership or interest therein shall expire forty-five (45) days after the date of receipt by it of written notice of such determination of fair market value. The Board shall be deemed to have exercised its option to purchase if it shall tender the required sum of money (directly or in escrow, pending title clearance) to the Unit Owner within said option period.

3. Devise. (a) In the event any Owner dies leaving a Will devising his Unit Ownership, or any interest therein, and said Will is admitted to probate, the members of the Board, acting on behalf of other Unit Owners, shall have a like option (to be exercised in the manner hereinafter set forth) to purchase said Unit Ownership or interest therein, either from the devisee or devisees thereof named in said Will, or, if a power of sale is conferred by said Will upon the personal representative named therein, from the personal representative acting pursuant to said power, for cash at fair market value which is to be determined by arbitration as herein provided.

(b) Within sixty (60) days after the appointment of a personal representative for the estate of the deceased Unit Owner, the Board shall appoint a qualified real estate appraiser to act as an arbitrator, and shall thereupon give written notice of such appointment to the said devisee or devisees or personal representative as the case may be. Within fifteen (15) days thereafter, said devisee or devisees or personal representative, as the case may be, shall appoint a qualified real estate appraiser to act as an arbitrator. Within ten (10) days after the appointment of said arbitrator, the two (2) so appointed shall appoint another qualified real estate appraiser to act as the third arbitrator. Within fifteen (15) days thereafter, the three (3) arbitrators shall determine, by majority vote, the fair market value of the Unit Ownership or interest therein devised by the deceased Unit Owner, and shall thereupon give written notice of such determination to the Board, and to said devisee or devisees or personal representative, as the case may be. If either party shall fail to select an appraiser, then the one designated by the other party shall make the appraisal. The Board's right to purchase the Unit Ownership or interest therein at the price determined by the three (3) arbitrators shall expire sixty (60) days after the date of receipt by it of such notice if the personal representative of the deceased Unit Owner is empowered to sell, and shall expire seven (7) months after the appointment of a personal representative who is not so empowered to sell. The Board shall be deemed to have exercised its option if it tenders the required sum of money (directly or in escrow, pending title clearance) to said devisee or to said personal representative, as the case may be, within the said option periods.

4. Involuntary Sale. (a) In the event any Unit Ownership or interest therein is sold at a judicial or execution sale (other than a mortgage foreclosure sale) the person acquiring title through such sale shall, before taking possession of the Unit so sold, give thirty (30) days written notice to the Board of his intention so to do, whereupon the members of the Board acting on behalf of the other Unit Owners, shall have an irrevocable option to purchase such Unit Ownership or interest therein at the same price for which it was sold at said sale. If said option is not exercised by the Board within said thirty (30) days after receipt of such notice, it shall thereupon expire and said purchaser may thereafter take possession of said Unit. The Board shall be deemed to have exercised its option if it tenders the required sum of money (directly or in escrow, pending title clearance) to the purchaser within said thirty (30) day period.

(b) In the event any Unit Owner shall default in the payment of any moneys required to be paid under the provisions of any mortgage or trust deed against his Unit Ownership, the Board shall have the right to cure such default by paying the amount so owing to the party entitled thereto and shall thereupon have a lien therefor against such Unit Ownership which lien shall have the same force and effect and may be enforced in the same manner as provided in Article IX hereof.

5. Consent of Voting Members. The Board shall not exercise any option hereinabove set forth to purchase any Unit Ownership or interest therein, without the prior written consent of the voting members holding at least two-thirds (2/3) percent of the total votes. The members of the Board or their duly authorized representatives acting on behalf of the other Owners, may bid to purchase at any sale of a Unit Ownership or interest therein of any Owner living or deceased which said sale is held pursuant to an order of direction of a court, upon the prior written consent of the aforesaid voting members having two-thirds (2/3) of the total votes which said consent shall set forth a maximum price which the members of the Board or their duly authorized representatives are authorized to bid and pay for said Unit Ownership or interest therein. If the requisite consent is obtained, any of the aforesaid options shall be exercised by the Board solely for the use and benefit of all Unit Owners, including the minority of Unit Owners, if any, not consenting thereto.

6. Release, Waiver, and Exceptions to Option. Upon the written consent of a majority of the Board members, any of the options, contained in this Article XI may be released or waived, and the Unit Ownership or interest therein which is subject to an option set forth in this Article may be sold, conveyed, leased, given or devised free and clear of the provisions of this Article.

7. Proof of Termination of Option. A certificate executed and acknowledged by the President or Secretary, stating that the provisions of this Article XI as hereinabove set forth have been met by a Unit Owner, or duly waived by the Board and that the rights of the Board hereunder have terminated, shall be conclusive upon the Board and the Unit Owners in favor of all persons who rely in good faith, and such certificate shall be furnished to any Unit Owner who has, in fact, complied with the provisions of this Article or with respect to whom the provisions of this Article have been waived, upon request at a reasonable fee.

8. Financing of Purchase under Option. (a) Acquisition of Unit Ownerships or any interests therein under the provisions of this Article shall be made from the maintenance fund. If said fund is insufficient, the Board shall levy a separate assessment against each Unit Owner in the manner set forth in Article IX(4) in the ratio that his percentage of ownership in the Common Elements as set forth in Exhibit "D" bears to the total of all such percentages applicable to Units subject to said assessment (thus excluding the percentage of any Unit Ownership being the subject of the purchase), which assessment shall become a lien and be enforceable in the same manner as provided in Article IX hereof.

(b) The members of the Board, in their discretion, may borrow money to finance the acquisition of any Unit Ownership or interest therein authorized by this Article; provided, however, that no financing may be secured by an encumbrance or hypothecation of any portion of the Property other than the Unit Ownership or the interest therein to be acquired. The loan documents evidencing such borrowing may be executed by the members of the Board, a nominee of the Board or by a land trust of which the Board shall be the beneficiary.

9. Title to Acquired Interest. Unit Ownerships or interests therein acquired pursuant to the terms of this Article XI shall be held of record in the name of the members of the Board of Managers and their successors-in-office, or such nominee as they shall designate, for the benefit of all the Unit Owners. Said Unit Ownerships or interests therein shall be sold or leased by the members of the Board in such manner as the Board shall determine without complying with the foregoing provisions relating to the Board's right of first refusal. All proceeds of such sale and/or leasing shall be deposited in the maintenance fund and credited to each Unit Owner in the same proportion in which the Board could levy a special assessment under the terms of Section 8 of this Article.

10. Exceptions to Board's Right of First Refusal. The Board's right of first refusal as provided in Sections 1, 2, 3 and 4 of this Article XI shall not apply to any sale, lease, gift, devise or other transfer by the TRUSTEE or Developer, by any corporation, trust or other entity when the original Unit Owner or persons having at least majority control of said Unit Owner are in control of the transferee, or resulting from statutory merger or consolidation, or between co-Owners of the same Unit, or to the spouse or to any lawful children of the Unit Owner, or any one or more of them, or to any trustee of a trust, the sole beneficiary or beneficiaries of which are the Unit Owner, the spouse or lawful children of the Unit Owner, or any one or more of them, or from any trustee of a trust to any one or more of the beneficiaries of such trust.

11. Responsibility of Transferees for Unpaid Assessments. In a voluntary transfer of a Unit, the transferee of the Unit shall be jointly and severally liable with the transferor for all unpaid assessments against the latter up to the time of transfer, without prejudice to the transferee's right to recover from the transferor the amounts paid by the transferee therefor. However, any such transferee shall be entitled to a statement from the Board or President, or managing agent of the Association, as the case may be setting forth the amount of the unpaid assessments against the transferor due the Association and such transferee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the transferor in excess of the amount therein set forth.

## ARTICLE XII

### DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDING

1. Insurance. (a) In the event the improvements forming a part of the Property, or any portion thereof, including any Unit, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss, or damage, and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds shall be applied by the Board or the payee of such insurance proceeds in payment therefor; provided, however, that in the event, within thirty (30) days after said damage or destruction shall occur, the Unit Owners elect either to sell the property as hereinafter provided in Article XIII or to withdraw the Property from the provisions of this Declaration and from the provisions of the Act, as therein provided, then such repair, restoration or reconstruction shall not be undertaken. In the event such repair, restoration or reconstruction is not undertaken the net proceeds of insurance policies shall be divided by the Board or the payee of such insurance proceeds among all Owners according to each Owner's percentage of ownership in the Common Elements as set forth in Exhibit "D" after first paying out of the share of each Owner the amount of any unpaid liens on his Unit in the order of the priority of such liens.

(b) If the insurance proceeds are insufficient to reconstruct the building and the Unit Owners and all other parties in interest do not voluntarily make provision for reconstruction of the building within one hundred and eighty (180) days from the date of damage or destruction, the Board may record a notice setting forth such facts and upon the recording of such notice:

(i) The Property shall be deemed to be owned in common by the Unit Owners;

(ii) The undivided interest in the Property owned in common which shall appertain to each Unit Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Elements;

(iii) Any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Unit Owner in the Property as provided herein; and

(iv) The Property shall be subject to an action, for partition at the suit of any Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Unit Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Property, after first paying out of the respective shares of the Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Unit Owner.

(c) In the case of damage or other destruction in which fewer than one-half (1/2) of the Units are rendered uninhabitable, upon the affirmative vote of not fewer than three-fourths (3/4) of the Unit Owners voting at a meeting called for that purpose, the building or other portion of the property shall be reconstructed. The meeting shall be held within thirty (30) days following the final adjustment of insurance claims, if any. Otherwise, such meeting shall be held within ninety (90) days of the occurrence. At such meeting the Board, or its representative, shall present to the members present an estimate of the cost of repair or reconstruction, and the estimated amount of necessary assessments against each Unit Owner.

(d) In the case of damage or other destruction, upon the affirmative vote of not fewer than three-fourths (3/4) of the Unit Owners voting at a meeting called for that purpose, any portion of the Property affected by such damage or destruction may be withdrawn from the Act. Upon the withdrawal of any Unit or portion thereof, the percentage of interest in the Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board. The payment of just compensation, or the allocation of any insurance or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage interest. Any insurance or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage interest therein. Any proceeds available from the withdrawal of any Limited Common Elements, will be distributed in accordance with the interest of those entitled to their use. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof by the Unit Owner shall cease.

2. Substantial Restoration. Repair, restoration or reconstruction of the improvements, as used in this Article, means restoring the improvements to substantially the same condition in which they existed prior to the damage or destruction with each Unit and the Common Elements having the same vertical and horizontal boundaries as before.

### ARTICLE XIII

#### SALE OF PROPERTY

The Owners by affirmative vote of at least seventy-five (75%) percent of the undivided ownership of the Common Elements, at a meeting duly called for such purpose, may elect to sell the Property as a whole. Within ten (10) days after the date of the meeting at which such sale was approved the Board shall give written notice of such action to the holder of any duly recorded mortgage or trust deed against any Unit Ownership entitled to notice pursuant to the terms of this Declaration. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale, provided, however, that any Unit Owner who did not vote in favor of such action and who has filed written objection thereto with the Board within twenty (20) days after the date of the meeting at which such sale was approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the value of his interest, as determined by a fair appraisal, less the amount of any unpaid assessments or charges due and owing from such Unit Owner. In the absence of agreement on an appraiser, such Unit Owner and the Board may each select an appraiser, and two so selected shall select a third, and the fair market value, as determined by a majority of the three so selected shall control. If either party shall fail to select an appraiser, then the one designated by the other party shall make the appraisal.



## ARTICLE XIV

### REMEDIES FOR BREACH OF COVENANTS, RESTRICTIONS AND REGULATIONS

1. **Abatement and Enjoinment.** The violation of any rule, restriction, condition or regulation adopted by the Board, or the breach of any covenant, or provision contained herein or contained in the Act, shall give the Board, in addition to any other rights set forth herein, the right:

(a) To enter upon any portion of the Property upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or conditions that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Developer, the TRUSTEE (and its beneficiaries), or their successors or assigns or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; and

(b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach. All expenses of the Board in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of ten percent (10%) per annum until paid, shall be charged to and assessed against such defaulting Unit Owner, and the Board shall have a lien for all of the same upon the Unit Ownership of such defaulting Unit Owner and upon all of his additions and improvements thereto and upon all of his personal property in his Unit or located elsewhere on the Property. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

2. **Enforcement By Homeowners Association.** To the extent the Board of Directors of the Homeowners Association is given the authority to regulate actions of the Unit Owners in Article X of this Declaration, such body shall have, in addition to any other rights set forth herein, the identical rights of Abatement and Enjoinment given to the Board in XIV(1).

3. **Involuntary Sale.** If any Owner (either by his own conduct or by the conduct of any other occupant of his Unit) shall violate or breach any of the covenants, restrictions or provisions of this Declaration, or the regulations adopted by the Board, and such violation shall continue for thirty (30) days after notice in writing from the Board, or shall reoccur more than once after such notice, then the Board shall have the power to issue to the defaulting Unit Owner a ten (10) day notice in writing to terminate the rights of the said defaulting Unit Owner to continue as an Owner and continue to occupy, use or control his Unit and thereupon an action in equity may be filed by the members of the Board against the defaulting Unit Owner for a decree of mandatory injunction against the Unit owner or Occupant or in the alternative a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit owned by him on account of the breach of covenant, and ordering that all the right, title and interest of the Unit Owner in the Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the Court shall establish, except that the Court shall enjoin and restrain the defaulting Unit Owner from re-acquiring his interest in the Property at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be taxes against the defaulting Unit Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to the Unit Owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the Unit Ownership, and, subject to the Board rights as provided in Section 4 of Article XI hereof, to immediate possession of the Unit sold and may apply to the Court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall provide, that the purchaser shall take the interest in the Property sold subject to this Declaration, and the purchaser shall become a member of the Association in the place and stead of the defaulting Unit Owner.

## ARTICLE XV

### GENERAL PROVISIONS

1. **Notice to Mortgage Lenders.** Upon written request to the Board, the holder of any duly recorded mortgage or trust deed against any Unit Ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Unit Owner or Owners whose Unit Ownership is subject to such mortgage or trust deed.
2. **Notices.** Notices provided for in this Declaration and in the Act, shall be in writing, and shall be addressed to the Association or Board, or any Unit Owner, as the case may be, at Hinsdale, DuPage County, Illinois, (indicating thereon the number of the respective Unit or apartment if addressed to a Unit Owner), or at such other address as herein provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner may also designate a different address for notices to him by giving written notice of his change of address to the Association or to the Board. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgement of the receipt thereof, or, if addressed to a Unit Owner, when deposited in his mailbox in the Building or at the door of his Unit in his Building.
3. **Service of Notices on Devisees and Personal Representatives.** Notices required or desired to be given to any devisee or personal representatives of a deceased Unit Owner may be delivered either personally or by mail to such party at his or its address appearing in the records of the Court wherein the estate of such deceased Owner is being administered.
4. **Covenants to Run with Land.** Each grantee of the TRUSTEE by the terms of a deed of conveyance, or each purchaser under Articles of Agreement for Trustee's Deed, or any contract for any deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges and the jurisdiction, rights, benefits and privileges of every character hereby granted, created, reserved, or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.
5. **Non-Waiver of Covenants.** No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur or any time lapse.

6. Amendments to Declaration. Except as may be otherwise provided in the Act, the provisions of this Declaration may be changed, modified or rescinded by an instrument in writing, setting forth such change, modification or rescission, approved by Unit Owners owning:

- (a) 100% of the total ownership of Common Elements with regard to Article V, Article IX, Section 5 of Article XI and Section 6 of Article XV;
- (b) more than 50% of the total ownership of Common Elements with regard to Article VII; and
- (c) at least 75% of the Common Elements with regard to the remainder of this Declaration;

by written consent or at a meeting of such Unit Owners called for such purpose; provided, however, that all holders of first mortgages of record have been notified by certified mail of such change, modification or rescission, that with regard to those provisions set forth in subparagraph (a) of this paragraph, 100% of said holders of first mortgages of record have approved in writing such change, modification or rescission, and that an affidavit by the Secretary certifying to such mailing and approval (where required) is made a part of such instrument.

During that period commencing with the first furnishing of this Declaration to a prospective buyer, and ending with the conveyance by the TRUSTEE of the last Unit which it owns, no changes or amendments may be made to this Declaration which would materially affect the rights of a buyer or the value of the Unit without, in addition to meeting the requirements of the foregoing paragraph, obtaining the approval of at least 75% of the buyers then owning interest in any Unit. For purposes of this paragraph, "buyer" shall mean a buyer in the first bona fide sale of any Unit.

Notwithstanding the provisions of the foregoing two paragraphs, if the Act or the Declaration require the consent or agreement of all Unit Owners or of all lien holders for any action specified in the Act or in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be approved by all the Unit Owners, or all lien holders, or both as required by the Act or this Declaration.

Except to the extent authorized by the provisions of the Act, no amendment of the Declaration shall change as to any Unit Owner the boundaries of any Unit, the undivided interest in the Common Elements, the number of votes in the Association, or the liability for common expenses appertaining to a Unit.

Those provisions of this Declaration relating to the rights of the TRUSTEE or any beneficiaries of the TRUSTEE may be amended, changed, modified or rescinded with the prior written consent of the TRUSTEE.

Any change, modification or rescission, whether accomplished under the provisions of any of the preceding five paragraphs, shall be effective upon recording of the instruments involved, provided, however, that no provision in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Act.

7. Severability. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

8. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the now living lawful descendants of the incumbent Mayor of Chicago, Illinois, and the incumbent President of the United States of America.

9. Interpretation of Declaration. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class condominium complex.

10. Ownership by Trust. In the event title to any Unit Ownership is conveyed to a land titleholding trust under the terms of which all powers of management, operation and control of the Ownership remain vested in the trust beneficiary or beneficiaries, then the Unit Ownership under such trust and the beneficiaries thereunder from time to time shall be personally responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings, chargeable or created under this Declaration against any such title holding Trustee personally for payment of any claim, lien or obligation created hereunder or for the performance of any agreement, covenant or undertaking hereby created, and the Trustee shall not be obligated to sequester funds or trust property to apply in whole or in part thereon, but the amount thereof shall continue to be a charge or lien upon the Unit Ownership and the beneficiaries of such trust notwithstanding any changes in the beneficial interest of any such trust or transfers of title to such Unit Ownership.

11. Board's Determination Binding. In the event of any dispute or disagreement between any Unit Owners relating to the interpretation or application of the provisions of the Declaration or By-Laws, the determination thereof by the Board shall be final and binding on each and all of the Unit Owners.

12. Trustee's Execution. This Declaration is executed by AMERICAN NATIONAL BANK AND TRUST COMPANY, as TRUSTEE as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such TRUSTEE (and AMERICAN NATIONAL BANK AND TRUST COMPANY hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed by every person, firm or corporation hereafter claiming any interest under this Declaration that AMERICAN NATIONAL BANK AND TRUST COMPANY, as TRUSTEE aforesaid, and not personally, has joined in the execution of this Declaration for the sole purpose of subjecting the titleholding interest and the trust estate under said Trust No 77182 to the terms of this Declaration; and that any and all obligations, duties and covenants and agreements of every nature herein set forth by AMERICAN NATIONAL BANK AND TRUST COMPANY, as TRUSTEE as aforesaid, are intended to be kept, performed and discharged by the beneficiary or beneficiaries under AMERICAN NATIONAL BANK AND TRUST COMPANY Trust No. 77182 or its successors and not by AMERICAN NATIONAL BANK AND TRUST COMPANY personally; and further that no duties shall rest upon AMERICAN NATIONAL BANK AND TRUST COMPANY either personally or as TRUSTEE, to sequester Trust assets, rentals, avails or proceeds of any kind, or otherwise to see to the fulfillment or discharge of any obligation express or implied, arising under the terms of this Declaration, except where said TRUSTEE is acting pursuant to direction as provided by the terms of said Trust No. 77182, and after the TRUSTEE has first been supplied with funds for that purpose. In the event of a conflict between the terms of this paragraph and of the remainder of the Declaration or any question of apparent liability or obligation resting upon said TRUSTEE, the exculpatory provisions hereof shall be controlling.

IN WITNESS WHEREOF, the said AMERICAN NATIONAL BANK AND TRUST COMPANY, as TRUSTEE aforesaid and not individually, has caused its corporate seal to be affixed hereunto and has caused its name to be signed to these presents by its Vice President and attested by its Assistant Secretary this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 1978.

**AMERICAN NATIONAL BANK AND TRUST COMPANY,**  
as TRUSTEE aforesaid, and not individually,

By: \_\_\_\_\_  
Vice President

By: \_\_\_\_\_  
Assistant Secretary

STATE OF ILLINOIS        )  
                                  )  
COUNTY OF \_\_\_\_\_  )

SS.

I, \_\_\_\_\_, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT \_\_\_\_\_, Vice President of AMERICAN NATIONAL BANK AND TRUST COMPANY, AND \_\_\_\_\_, Assistant Secretary of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary respectively appeared before me this day in person and acknowledged that they signed, and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Bank for the uses and purposes therein set forth; and the said Assistant Secretary did also then and there acknowledge that he, as custodian of the Corporate Seal of said Bank, did affix the said Corporate Seal of said Bank to said instrument as his own free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ of \_\_\_\_\_, A.D., 1978.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

EXHIBIT A

Development Tract Legal Description

**EXHIBIT B**

**Parcel Legal Description**

EXHIBIT D

Percentage Ownership of Common Elements

<u>Unit</u>	<u>% of Ownership in the Common Elements</u>
1A	3.388
1B	2.938
1C	2.938
1D	2.938
1E	2.938
2A	3.463
2B	3.538
2C	2.863
2D	2.863
2E	2.863
2F	2.863
3A	3.313
3B	3.108
3C	2.654
3D	2.654
3E	2.654
3F	2.654
4A	3.108
4B	3.108
4C	2.654
4D	2.654
4E	2.654
4F	2.654
5A	3.184
5B	3.184
5C	2.729
5D	2.729
5E	2.729
5F	2.729
6A	3.259
6B	3.259
6C	2.805
6D	2.805
6E	2.805
	<u>3.259</u>
34 Units	100%